IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP NO. 18801 of 2006

DATE OF DECISION: 18.04.2007

ASI Jai Kishan ..Petitioner.

Versus

State of Haryana and others ....Respondents.

CORAM: HON'BLE MR.JUSTICE J.S. KHEHAR
HON'BLE MR. JUSTICE L.N. MITTAL

PRESENT: Mr. S.N.Yadav, Advocate
for the petitioner.

Mr. Sanjiv Bansal, Addl.A.G. Haryana,
for the respondents.

J.S. Khehar, J. (oral)

The instant controversy relates to the expunction of three adverse reports, which were communicated to the petitioner for three different years. The first one pertains to the period from 21.9.1990 to 31.3.1991. Relevant extract of the adverse report, communicated to the petitioner for the aforesaid period, is being extracted hereunder:-

> "Believes in loyalty towards political workers than in senior officers.
>
> You are advised to improve these defects."

The second adverse remarks were conveyed to the petitioner for the period from 15.7.1997 to 24.4.1998. The remarks conveyed to the petitioner, by the second adverse report, are being reproduced

hereunder:-

"1. Honesty	No beyond doubt
2. General Remarks	He has weakness of being influenced by people for extraneous considerations. You are advised to improve these defects."

For a third time, adverse remarks were conveyed to the petitioner for the period from 25.11.1998 to 19.3.1999. The adverse remarks conveyed on this occasion are extracted as under:-

"1. Discipline	Average
2. Confidence	Average
3. Character	Average
4. Special remarks during this period	Average level of working during this period. Regarding False entry in Rojnamcha D/E is pending.

It is not a matter of dispute that the first representation made by the petitioner as against the aforestated remarks was rejected. It is thereafter that the petitioner, on the same date, preferred a second representation against all the three adverse annual confidential reports, referred to above. The second representation was addressed by the petitioner on 4.2.2001. The same officer, by a common order, expunged all the three adverse reports, on 3.8.2001. The innocuous order by which the adverse annual confidential reports were expunged is being reproduced hereunder:-

> " Mercy representation dated 4.2.2001 & 3.7.2001 of HC Jai Kishan No.1/JJR against the adverse remarks for the period from 21.9.90 to 31.3.91, 15.7.97 to 24.4.98 and 25.11.98 to 19.3.99 have been recorded in his ACR for the period mentioned above have been expunged. He may please be informed accordingly."

On account of the fact, that remarks were expunged on the basis of a

second representation, which is not competent, the order dated 3.8.2001, extracted hereinabove, was sought to be revoked, with the issuance of a show cause notice dated 7.8.2006 (Annexure P16). Having considered the reply of the petitioner, the impugned order dated 19.10.2006 (Annexure P18) was passed, ordering the reconstruction of the adverse reports, which had been communicated to the petitioner (details whereof have been referred to hereinabove), on account of the fact, that a second representation is not competent for the expunction of the adverse remarks.

The issue, whether or not, a second representation is competent for expunction of adverse remarks, has been adjudicated upon by us, while dealing with Vinod Kumar V. State of Haryana (CWP No.9805 of 2006, decided on 4.4.2007),wherein it has been held by us that a second representation is not competent for expunction of adverse remarks. For the same reasons, as have been referred to in the order passed by us in Vinod Kumar's case (supra), we are satisfied, that the claim raised by the petitioner, in the instant writ petition, deserves to be rejected. Additionally, pointed reference needs to be made to the order dated 3.8.2001 (which has been extracted hereinabove), which shows that the same officer considered all the three annual confidential reports, communicated to the petitioner from the years 1990-91 to the year 1998-99 and expunged the same, without recording any reasons whatsoever for the same. It is not necessary for us to tender any further comments on the matter, other than to highlight the fact, as has been noticed hereinabove.

Besides the issue, as has been decided hereinabove, learned counsel for the petitioner has invited our attention to the adverse remarks for the period from 25.11.1998 to 19.3.1999 (extracted hereinabove),

wherein reference has been made to a pending departmental enquiry. It is the pointed contention of the learned counsel for the petitioner, that on account of the fact, that the petitioner has been exonerated in the aforestated departmental enquiry, referred to in the confidential report for the period from 25.11.1998 to 19.3.1999, the remarks communicated to him for the aforesaid period, should be expunged, in view of the order passed by this Court in Randhir Singh, ASI Vs. State of Haryana (CWP No.867 of 2007, decided on 29.3.2007). It is not possible for us to accept the instant contention of the learned counsel for the petitioner. While in Randhir Singh's case (supra) the adverse remarks contained in the annual confidential report were, inter alia, the same, on the basis of which the petitioner was exonerated in a departmental enquiry, herein no adverse remarks were communicated to the petitioner for the period from 25.11.1998 to 19.3.1999 on the subject matter, on which the departmental enquiry was pending against the petitioner. The extract of the aforesaid report reveals, that a mere mention was made in the said report about the pendency of a departmental enquiry. Consequently, the exoneration of the petitioner in the said departmental enquiry would have no bearing on the remarks actually communicated to him.

For the reasons recorded hereinabove, we find no merit in this petition, which is hereby dismissed.

(J.S. Khehar)
Judge

(L.N. Mittal)
Judge

April 18, 2007.
vig